

LIEUTENANT SCOTT BOYHER 12/8/2020

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1 IN THE UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF MISSOURI
3 EASTERN DIVISION
4 ALISON DREITH,)
5 Plaintiff,)
6 v.) Case No.
7 CITY OF SAINT LOUIS, et) 4:18-CV-01565-JCH
8 al.,)
9 Defendants.)
10
11 DEREK LANEY,)
12 Plaintiff,)
13 v.) Case No.
14 CITY OF SAINT LOUIS,) 4:18-cv-01575-CDP
15 MISSOURI, et al.,)
16 Defendants.)

17
18 VIDEO RECORDED ZOOM DEPOSITION OF
19 LIEUTENANT SCOTT BOYHER
20 TAKEN ON BEHALF OF THE PLAINTIFF
21 DECEMBER 8, 2020

22
23
24
25 Exhibit A

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11 Plaintiff,)
12 v.) Case No.
13 CITY OF SAINT LOUIS,) 4:18-cv-01575-CDP
14 MISSOURI, et al.,)
15 Defendants.)
16 VIDEO RECORDED ZOOM DEPOSITION OF LIEUTENANT
17 SCOTT BOYHER, produced, sworn and examined on
18 December 8, 2020, at 711 North 11th Street, St.
19 Louis, Missouri 63101, appearing remotely before
20 Ashley C. Huelsmann, RPR, CSR(IL) and CCR(MO), in a
21 certain cause now pending in the United States
22 District Court, Eastern District of Missouri,
23 Eastern Division, between ALISON DREITH, Plaintiff,
24 vs. CITY OF SAINT LOUIS, et al., Defendants; DEREK
25 LANEY, Plaintiff, vs. CITY OF SAINT LOUIS, et al.,
Defendants, on behalf of the Plaintiffs.

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1 A P P E A R A N C E S

2

3 FOR THE PLAINTIFFS (REMOTE):

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8

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(314) 622-4694

13

14

VIDEOGRAPHER (REMOTE):

15

JOHN NIEHAUS, CLVS
16 ALARIS LITIGATION SERVICES
711 North Eleventh Street
17 St. Louis, MO 63101
(314) 644-2191
18 (800) 280-3376

19

20 COURT REPORTER (REMOTE):

21 ASHLEY C. HUELSMANN, RPR
CSR(IL)#084-004666, CCR(MO-1076)
22 ALARIS LITIGATION SERVICES
711 North Eleventh Street
23 St. Louis, MO 63101
(314) 644-2191
24 (800) 280-3376

25

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1 IT IS HEREBY STIPULATED AND AGREED by
2 and between counsel for the Plaintiff and counsel
3 for the Defendants that this video recorded Zoom
4 deposition may be taken in shorthand by Ashley C.
5 Huelsmann, a Registered Professional Reporter,
6 Certified Shorthand Reporter (IL) and Certified
7 Court Reporter (MO), and afterwards transcribed into
8 typewriting; and the signature of the witness is
9 expressly waived.

10 (DEPOSITION STARTED AT 9:34 A.M.)

11 VIDEOGRAPHER: We're on the record.
12 Today's date is December 8th, 2020, and the time is
13 approximately 9:34 a.m.

14 This is the video recorded deposition
15 of Lieutenant Scott Boyher in the matters of Alison
16 Dreith verse City of Saint Louis, et al., Case
17 Number 4:18-CV-01565-JCH, and Derek Laney verse City
18 of Saint Louis, Missouri, et al., Case Number
19 4:18-cv-1575-CDP in the United States District
20 Court, Eastern District of Missouri, Eastern
21 Division.

22 This deposition is being held in remote
23 locations. The reporter's name is Ashley Huelsmann.
24 My name is John Niehaus. I'm the Legal
25 Videographer. We are with Alaris Litigation

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1 Services.

2 Will counsel please introduce yourself
3 for the record?

4 MR. WYRSCH: James Wyrsh on behalf of
5 Plaintiff, along with me is Kiara Drake.

6 MS. DUNCAN: Abby Duncan for
7 Defendants, and along with me is Brandon Laird.

8 VIDEOGRAPHER: Would the court reporter
9 please administer the remote stipulation and swear
10 the deponent?

11 COURT REPORTER: My name is Ashley
12 Huelsmann, and I am a Registered Professional
13 Reporter, Certified Shorthand Reporter and Certified
14 Court Reporter.

15 This deposition is being taken
16 remotely, and those participating in this deposition
17 today are attending via video conference, with the
18 witness appearing at 711 North 11th Street, St.
19 Louis, Missouri 63101.

20 The attorneys participating in this
21 proceeding acknowledge their understanding that I am
22 not physically present with the witness and
23 acknowledge that, in lieu of an oath administered in
24 person, the witness will verbally declare their
25 testimony in this matter under penalty of perjury.

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1 The parties and their counsel consent to this
2 arrangement and waive any objections to this manner
3 of proceeding.

4 Counsel, please indicate your agreement
5 verbally on the record by first stating your name
6 and that you stipulate to these terms, after which I
7 will swear in the witness and we may begin.

8 MR. WYRSCH: James Wyrsh on behalf of
9 Plaintiff, we stipulate to those terms.

10 MS. DUNCAN: Abby Duncan on behalf of
11 the Defendants and we so stipulate.

12 * * * * *

13 LIEUTENANT SCOTT BOYHER,
14 of lawful age, produced, sworn and examined on
15 behalf of the plaintiff, deposes and says:

16 THE WITNESS: Yes.

17 THE CLERK: Thank you, sir.

18 DIRECT EXAMINATION

19 BY MR. WYRSCH:

20 Q. Good morning.

21 A. Good morning.

22 Q. Can you go ahead and give your name for
23 the record?

24 A. Scott Boyher.

25 Q. And what is your current employer?

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1 A. I just answered that. No.

2 Q. Well I asked you how, not who, so
3 different question. So you do not -- you do not
4 know -- so -- so how was it -- how -- how was it
5 presented to you -- I mean, you're the head of the
6 bike team at that time, you're the lieutenant in
7 charge of the bike team?

8 A. Yes.

9 Q. What -- what -- what are your -- what
10 are your general duties as the head of the bike team
11 non-protest related, what -- what do you -- what do
12 you do?

13 A. The policing of downtown.

14 Q. And how -- how many -- and in 2017 -- -
15 or say, 2016, how many team members were -- or how
16 many people did you have under your command?

17 A. What was the date?

18 Q. In 2016. The fall of 2016.

19 A. How many people did I have under my
20 command as the Bike Unit?

21 Q. Was there -- was it -- let's talk about
22 the Bike Unit first, sure.

23 A. The Bike Unit's, roughly, 25 people.

24 Q. And it's been roughly 25 people now in
25 2016?

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1 A. Some.

2 Q. But you -- you don't know why the
3 person who's the main bike trainer was not part of
4 the squad?

5 A. He was in a different assignment.

6 Q. Were there other bike trainers?

7 A. Yes.

8 Q. Who were they?

9 A. Adam Duke.

10 Q. Anyone else?

11 A. Nick Harbaugh, and that's it.

12 Q. How do you spell that?

13 A. Harbaugh -- H-A-R-B-A-U-G-H, I believe.

14 Q. And they were trainers in 2016?

15 A. I believe so.

16 Q. Were they members of the bike squad?

17 A. Harbaugh -- Nick Harbaugh was.

18 Q. Adam Duke was not?

19 A. Correct.

20 Q. What did the Tiger Mountain Tactical
21 training consist of?

22 A. Formations -- basically large crowd
23 management, formations.

24 Q. What kind of formations?

25 A. Separation formations, line formations,

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1 cross bow formations.

2 Q. How -- how many days was the training?

3 A. A week.

4 Q. When you say "a week", do you mean five
5 days or seven days?

6 A. I believe it was five days. It may
7 have been four.

8 Q. 40 --

9 A. Four or five days.

10 Q. 40 -- 40 hours, roughly?

11 A. I don't recall.

12 Q. How much of the time was done in class,
13 if any?

14 A. No, there was plenty. I don't recall.

15 Q. Was it field training, as well?

16 A. Yes.

17 Q. Where did that occur?

18 A. I believe it was in Forest Park.

19 Q. And what do you remember about that
20 field training?

21 A. It was going over BRT formations, how
22 to operate as a group.

23 Q. Did you practice the formations?

24 A. Yes.

25 Q. What was your role in the training?

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1 A. I don't recall. I don't recall.

2 Q. What do you remember about the
3 classroom training?

4 A. We've been through it so -- I don't
5 remember the first time. There's classroom training
6 and then there's field exercise.

7 Q. What -- what -- if -- even if you don't
8 remember the first time, the other times you've gone
9 through it, what -- what kind of things are
10 discussed during the classroom time?

11 A. How to hold formations, what people's
12 area of responsibility are, how to operate as a
13 team, what the -- different formations to use,
14 tactics to use, cross bow arrests.

15 Q. Anything else you can remember?

16 A. No.

17 Q. What do you mean by "people's area of
18 responsibility"?

19 A. If you're assigned to a line, then
20 you're a line officer. And then you have
21 linebackers. And if you have a sufficient amount of
22 manpower you'll have arrest teams behind them.

23 Q. What is the role of a line officer in
24 the BRT?

25 A. To form the line -- or --

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1 there.

2 **Q. Linebacker can decide for themselves to**
3 **make an arrest?**

4 A. I'm sorry?

5 **Q. A linebacker can decide for themselves**
6 **whether they want to make an arrest?**

7 A. Yes.

8 **Q. They don't need to consult the sergeant**
9 **or lieutenant?**

10 A. If a linebacker is making an arrest,
11 they're not going to breach the line, it will be at
12 line. So yes, they're able to do that.

13 **Q. If someone -- if -- if there's a**
14 **decision to breach the line, does that have to be**
15 **made by a sergeant or a lieutenant?**

16 A. Under most circumstances that would be
17 made by one of the supervisors.

18 **Q. Between the training that you got in**
19 **advance of the presidential debate and the Stockley**
20 **protest, did the BRT conduct any additional**
21 **training?**

22 A. I'm sure that we did, but I -- I don't
23 recall the dates.

24 **Q. Where would that be recorded?**

25 A. That may -- I don't believe there is an

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1 A. That would be speculation on my part.

2 MR. WYRSCH: Okay. Why don't we take a
3 ten-minute break?

4 VIDEOGRAPHER: We're going off the
5 record at approximately 10:46 a.m.

6 (THERE WAS A BREAK.)

7 VIDEOGRAPHER: We're back on the record
8 at approximately 11:00 a.m.

9 BY MR. WYRSCH:

10 Q. Lieutenant Boyher, prior to the
11 Stockley protests in September of 2017, did BRT and
12 CDT ever train together? Excuse me.

13 A. We trained at the same locations, and
14 the BRT Unit would -- would assist the CDT team in
15 role-playing. However, the two units don't
16 intermingle.

17 Q. Tell me more about that. What -- what
18 do you mean you trained -- you assist in
19 role-playing, but you don't co-mingle, I'm -- I
20 don't understand what you mean.

21 A. The BRT Unit is a -- we don't have the
22 protective gear that the CDT team does. So when a
23 CDT team is deployed it is usually deployed when
24 things have become more violent or it's anticipated
25 that things are going to decline.

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1 The Bike Unit is -- primary's
2 responsibility is large crowd management, not civil
3 disobedience response.

4 So when we would train while the units
5 have relatively the same type of formations, we
6 don't intermingle with CDT because when CDT is out
7 the -- the BRT will pull -- pull out.

8 **Q. Yeah.**

9 A. We're not equipped with the protective
10 equipment.

11 **Q. When you said you did role-playing,**
12 **what do you mean?**

13 A. We will be -- the Bike Unit would be a
14 body of people that the CDT would practice on
15 moving, making arrests on, that type of thing.

16 **Q. Okay. So they wouldn't be -- I assume**
17 **they wouldn't have their bikes with them at that**
18 **time?**

19 A. During --

20 **Q. When you're role-playing.**

21 A. Oh, in the role-playing, no.

22 **Q. Okay. So they're -- they're basically**
23 **pretending to be civilians?**

24 A. Yes.

25 **Q. So is there -- was there ever any**

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1 training prior to Stockley where CDT and the Bike
2 Unit trained in tandem in any way, a coordinated
3 effort where the bike team's actually in their --
4 you know, had their bikes and doing formations in
5 that way?

6 A. We'll be at the same locations doing
7 training, which are very similar. Our roles are
8 different.

9 Q. Okay. You don't -- you don't practice
10 together?

11 A. No.

12 Q. So in the -- in the cases in which
13 you've testified, I just want to run through the
14 list of parties from -- from that weekend and ask
15 you if you -- if you are familiar with them, and
16 specifically were you familiar with them -- well,
17 we'll get into the when.

18 So when I say "familiar", meaning do
19 you -- do you know them personally, or had you heard
20 of them, or are you aware of who they are generally;
21 do you understand what I mean?

22 A. Yes.

23 Q. Okay. So were you familiar with Fareed
24 Alston?

25 A. No.

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1 Q. Uh-huh.

2 A. -- so I -- I --

3 Q. So tell me -- tell me everything you
4 remember about the buildup to this situation and her
5 involvement in it.

6 A. The protestors -- the protest action
7 they had surrounded the CDT buses, which I believe
8 that there's a significant amount of film footage.
9 They were throwing stuff at the buses. I was given
10 an order to bring in the BRT to try to split the --
11 the crowd, so we could extract the buses out and
12 move out of the area.

13 Q. Okay. What does that have to do with
14 this photo?

15 A. That's what we're doing. We're -- we
16 have a line that we're trying to get up to that bus.
17 And the protestors were trying to stop the officers
18 from getting up there to get the buses out.

19 Q. Where are the buses in relation to this
20 photo?

21 A. They're over in front of the fire
22 department.

23 Q. Which is south of this location?

24 A. Yes.

25 Q. Okay. So this is Tucker and Clark?

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1 scene, or was this in an after video review -- an
2 after video review?

3 A. It would have been later.

4 Q. Okay. But you -- you -- the only
5 person you were able to identify is Mr. Laney?

6 A. Yes.

7 Q. Did you issue a wanted for him?

8 A. I did not, one was issued for him.

9 Q. Okay. What was the basis for the
10 wanted?

11 A. He assaulted Sergeant Marks.

12 Q. Was he ever charged with that or
13 arrested?

14 A. He was placed as wanted. I don't know
15 if he was arrested on it or not.

16 Q. I'm going to show you what we're
17 marking as Exhibit 198. Have you seen this picture
18 before?

19 A. I don't think so.

20 Q. Is this you (indicating)?

21 A. That is me.

22 Q. Okay. Do you see all this spray around
23 here (indicating)?

24 A. Yes.

25 Q. Is that pepper spray?

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1 A. I would assume so.

2 Q. Is that your pepper spray canister?

3 A. Yes.

4 Q. Is that Sergeant Marks?

5 A. Yes.

6 Q. Do you -- do you know -- do you know
7 what the circumstances of what happened here are?

8 A. No, I don't recall.

9 Q. Do you know why you deployed pepper
10 spray at this time?

11 A. I don't -- I don't recall -- I don't
12 recall the incident.

13 Q. Okay. So in these -- what -- why were
14 none of the people arrested contemporaneously that
15 -- that you sprayed?

16 A. Why were none of the people arrested?

17 Q. Yeah.

18 A. We had a mission of extracting the
19 buses. I could not lose any manpower to go arrest
20 people. We needed every -- every available person
21 to get the buses out.

22 Q. Were there CDT teams around?

23 A. They were trapped on the bus at one
24 point.

25 Q. All of them?

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1 interviewed.

2 Q. I'm going to show you what we've marked
3 as Exhibit 201. Do you see the exhibit? Do you see
4 that video?

5 A. I see a picture.

6 Q. Yep. This is the bus again that we've
7 been describing?

8 A. That's one of them. I don't know if
9 that's the first or the second one.

10 Q. Okay. All right. Now, Mr. Laney here
11 (indicating). Is that Marks?

12 A. Yes. We keep -- the segment where
13 they're fighting, you just missed.

14 Q. Well, I mean I didn't take this video,
15 I take them as they come.

16 A. Okay, okay, okay.

17 Q. I'll play it back for you, the whole
18 thing. It's not very long. Okay. I'm slowing it
19 down for you. I mean, this is Marks (indicating),
20 right?

21 A. Uh-huh.

22 Q. This is Mr. Laney (indicating)?

23 A. Uh-huh.

24 Q. There's space between them?

25 A. Yeah.

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1 evident with the other photographs that we looked
2 at.

3 Q. Okay. But do you see anything in here
4 that's blocking as you said before from getting to
5 the bus?

6 A. In that snapshot, no.

7 Q. In the video we just watched.

8 A. No, but I don't know what occurred
9 before then.

10 Q. Okay. Do you see the woman in purple
11 here?

12 A. Yeah, I see a -- is that -- yeah, an
13 elderly woman or a man, yeah.

14 Q. No, it's the same woman we were looking
15 at before. And the woman with the pink hair. So
16 I'm trying to understand where in this video you're
17 being prevented from getting to the bus.

18 A. You're bouncing through, can you go
19 back and --

20 Q. I'll go to the beginning.

21 A. There's something going on right here
22 where they're blocking -- part of the BRT has made
23 it through, part of them are being stopped somehow
24 by -- by people.

25 Q. That's your -- your position is that

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1 that these people were able to make it through, but
2 others were --

3 A. Correct.

4 Q. -- civilians were blocking police
5 officers from getting where they're going?

6 A. To the best of my memory, that's what I
7 remember, yeah.

8 Q. I mean, where along this line here are
9 people blocking them?

10 A. Well, right there in that -- in that
11 shot there isn't.

12 Q. Okay. And now you see Mr. Laney here.
13 Do you recognize anyone in these -- in this line
14 right here (indicating)?

15 A. Not by the tape right here, I can't. I
16 know Mike Marks and Ben Bayless were up here in the
17 front. I can't --

18 Q. Do you know --

19 A. -- we're jumping around --

20 Q. -- who this is (indicating)?

21 A. Oh, that's Marks, that's Marks there.

22 Q. Okay. And that's you?

23 A. Yes.

24 Q. So what -- what did -- what did you
25 witness?

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1 it's to push him out of the way of the bus. When I
2 reached them, they were fighting and I maced -- and
3 I maced Landy -- Laney.

4 **Q. Right here, I know it's fuzzy, but Mr.**
5 **Laney is going backwards.**

6 A. Right they've already been fighting, I
7 don't know what's --

8 **Q. Whoever this -- whoever is -- are you**
9 **fast forwarding where we're missing this?**

10 A. I'm not -- I didn't create the -- I'm
11 playing it in realtime.

12 **Q. Oh, okay.**

13 A. I'm sorry, it looks like you're fast
14 forwarding it.

15 **Q. No, I'm -- I'm -- someone else is**
16 **moving it around.**

17 A. Okay. He has -- he has Marks's bike at
18 one point, they're fighting. That's Ben Bayless.
19 At one time he had a hold of his bike. I didn't
20 witness that. He just kicked -- kicked his bike
21 right there.

22 **Q. Well, who -- who is Ben Bayless, this**
23 **person (indicating)?**

24 A. That little guy.

25 **Q. That's Ben Bayless?**

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1 at approximately 2:32 p.m.

2 BY MR. WYRSCH:

3 Q. All right. So I'm going to show you
4 what we've marked as Exhibit 202, which for the
5 record is video City 02010, Tucker and Market, 2017,
6 9/15. Do you recognize this video?

7 A. No.

8 Q. All right. So this is I'll represent
9 to you the Real Time Crime Center version. And let
10 me get my little pointer. What are the officers
11 doing right there?

12 A. I'm -- I'm not up there. I -- I can't
13 tell if that's the front of the bus or it's the back
14 of the bus.

15 Q. Oh, hold on. We're starting -- I'm
16 going to start at the 1:33:08 mark in the video. So
17 these are the people that are sort of blocking the
18 bus; is that right?

19 A. Yes.

20 Q. And then what is -- how are you -- what
21 was the -- what was the order of how to get them to
22 move?

23 A. The -- we were going to form a
24 formation, give everybody verbal direction to get --
25 you know, as you get up there, move off the bus, and

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1 then escalate at -- to whatever we have to do.

2 We're trying to get the bus out.

3 Q. Okay. So these are -- these are the
4 bike officers coming up?

5 A. Those are bike officers.

6 Q. All right. Does that look like
7 verbal --

8 A. Yeah, they're -- that whole group is
9 screaming move.

10 Q. Do you -- do you think that was -- do
11 you think that they gave them an opportunity to
12 comply with that?

13 A. Yes. The majority of them are moving.

14 Q. I'll point out here that's Mr. Laney.
15 Do you happen to know who this would be
16 (indicating)?

17 A. I can't tell. I can't even tell that's
18 Mr. Laney.

19 Q. Okay. And then you see how the officer
20 --

21 A. Oh, yeah --

22 Q. -- pushes the bike towards him?

23 A. No, I think he's grabbing the bike.

24 Q. Really? Okay.

25 A. Yeah.

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1 **Q. So is that what you're talking about**
2 **when the -- so do you -- do you know if this is**
3 **Marks, or is this someone else?**

4 A. I don't know, I can't tell.

5 **Q. I'll just play it.**

6 A. Yeah, that would be Marks, he had
7 chevrons on, yes.

8 **Q. Okay. That's you right there**
9 **(indicating)?**

10 A. Yes. And Laney has got a hold of that
11 bike when I spray him.

12 **Q. He has a hold of the bike when you're**
13 **spraying him?**

14 A. He either -- he either has a hold or
15 just -- they're actively fighting. You can see
16 where he's got the bike here. I don't know if his
17 hands were on the bike when I sprayed him, I don't
18 -- or off the bike. He's obviously fighting with
19 officers. We're trying to extract a bus.

20 **Q. Okay. So just for the record, we're at**
21 **1:34:03, and then there's -- they -- someone --**
22 **somehow that bike goes towards Mr. Laney --**

23 A. Yeah, you can see them both tugging
24 over the bike.

25 **Q. All right. Well, we're at 1:34:14.**

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1 A. Uh-huh.

2 Q. That's 11 seconds that have elapsed?

3 A. Uh-huh.

4 Q. And you're saying in that time they
5 were tugging over the bike and there was a fight?

6 A. Yes, they're fighting over that bike
7 right there.

8 Q. And that's the reason that you pepper
9 sprayed him?

10 A. Yes, he's -- he's interfering with the
11 officers. He's being assaulting and he's
12 interfering with the officers, too, for extracting
13 the bus, yes, that's why he was sprayed.

14 Q. What -- what -- how is he interfering?

15 A. I think it shows right there on the
16 tape, he's in the middle of the BRT ling fighting
17 with a sergeant over his bike. And we're bringing
18 that bus --

19 Q. So it's your contention -- it's your
20 contention that this depicts him fighting, and
21 that's -- and that's the interference?

22 A. Yes.

23 Q. Is it possible that he came up to them
24 to talk to them and the officer used his bike to
25 push him away?